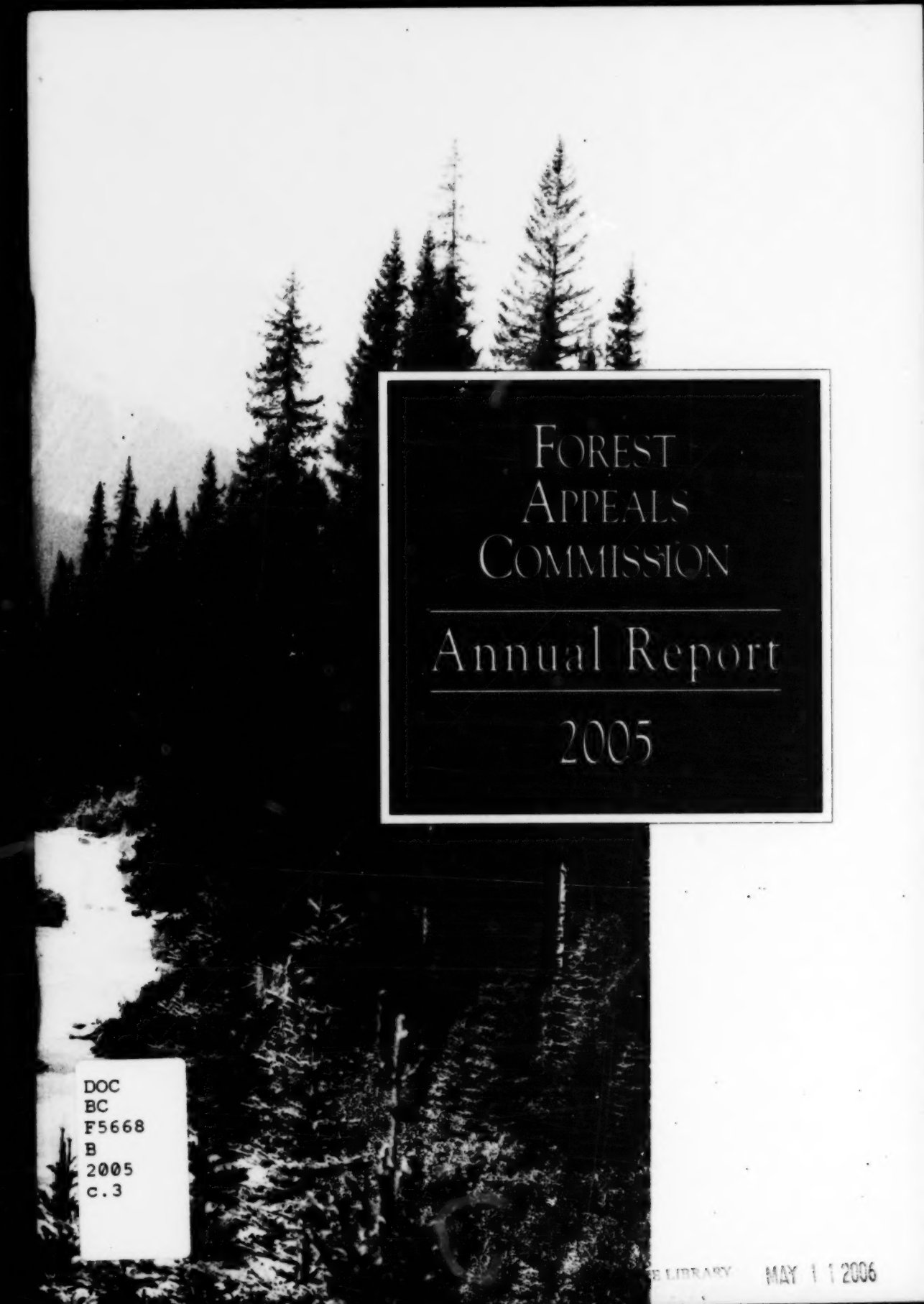

Forest Appeals Commission

Annual Report

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Minister of Energy and Mines
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Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2005 to December 31, 2005.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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Message from the Chair

I am pleased to submit the eleventh Annual Report of the Forest Appeals Commission.

During 2005, the Commission continued to witness a steady increase in the number of appeals filed under the *Forest Act*. The number of stumpage-related appeals filed under this Act rose from 89 in 2004 to 132 in 2005, an increase of approximately fifty percent. Consequently, the Commission also held more hearings and issued more decisions in 2005 than in previous years.

In 2005, the Commission did not receive any appeals under the *Private Managed Forest Land Act* or the *Wildfire Act*, which came into force in 2004 and 2005, respectively.

Unlike previous years, the membership of the Commission did not change in 2005. The Commission continues to have a stable roster of highly qualified individuals, including professional foresters, professional biologists and lawyers with expertise in the areas of natural resources and administrative law, who are appointed as part-time members.

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*"), and has been continued under the *Forest and Range Practices Act*.

This is the eleventh Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2005 to December 31, 2005.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to all of the forest legislation, from which it hears appeals.

Finally, summaries of the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and the relevant sections of the applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission's website. If you have questions, or would like additional copies of this report, please contact the Commission office. The Commission can be reached at:

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The Commission

The Forest Appeals Commission is an independent agency, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of the appeal and review processes, and with recommendations for amendments to some of the forest legislation and regulations respecting reviews and appeals.

Commission Membership

The Commission members are appointed by the Lieutenant Governor in Council (Cabinet). The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members. Appointments to the Commission are subject to the terms and conditions set out in the *Administrative Tribunals Appointment and Administration Act*, S.B.C. 2003, c. 47.

For this report period the Commission consisted of the following members:

MEMBER	FROM
Chair	
Alan Andison	Victoria
Vice-chair	
David Ormerod	Victoria
Members	
Sean Brophy	North Vancouver
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Don Cummings	Penticton
Cindy Derkaz	Salmon Arm
Bruce Devitt	Victoria
Margaret Eriksson	New Westminster
Bob Gerath	North Vancouver
R.A. (Al) Gorley	Victoria
James Hackett	Nanaimo
Lynne Huestis	North Vancouver
Katherine Lewis	Prince George
Paul Love	Campbell River
Gary Robinson	Victoria
David Searle, C.M., Q.C.	Vancouver
Lorraine Shore	Vancouver
David J. Thomas	Victoria
Robert J. Wickett	Vancouver
Stephen V.H. Willett	Kamloops
Phillip Wong	Vancouver
J.A. (Alex) Wood	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals who make decisions that affect the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board.

Each of the tribunals operates independently of one another. Supporting four tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2005/2006 budget for the Forest Appeals Commission was $332,000.

The fiscal 2005/2006 budget for the shared office and staff was $1,213,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.

Until March 31, 2005, the only decisions that could be appealed under the *Code* were those made under sections 82 and 95(2) of the *Code* as follows:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression; and
- a determination that a person or that person's employee contributed to fire.

A review of the decision was required at the request of the person subject to a decision under sections 82 and 95(2) of the *Code*. The Forest Practices Board could also require a review if it received consent from the person subject to the determination. Either the determination, or a decision made after completion of a review of the determination, could be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Effective March 31, 2005, the *Wildfire Act*, S.B.C. 2004, c. 31 came into force. The sections addressing fire control and suppression that were in the Code, are now found in the *Wildfire Act*, and sections 82 to 95 of the *Code* were repealed effective March 31, 2005.

As a result of these legislative changes, there are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, most of (i.e., some powers and procedures are found there, and some are found in the other Acts) the Commission's powers and procedures remain in the *Code*.

Appeals under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69.

The *Forest and Range Practices Act* states that the Commission is continued under section 194 of the *Code*, and it incorporates the Commission's powers and procedures as set out in the *Code*. Part 3 of the *Administrative Review and Appeal Procedure Regulation* provides further detail on the appeal procedures.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the appealable decisions, which include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;

- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits under this Act;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act, the regulations, standards or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, a person who made the determination may correct certain errors in the determination, within 15 days after the determination was made.

In addition, a review must be conducted at the request of the person subject to certain determinations listed under the *Forest and Range Practices Act*. However, it will only be conducted if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*, R.S.B.C. 1996, c. 157.

Appealable decisions under the *Forest Act* are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests, may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*, S.B.C. 2004, c. 71.

Effective March 31, 2005, a new *Range* Act came into force. More decisions are appealable under the new Act than under the previous *Range* Act, R.S.B.C. 1996, c. 396. They include:

- orders deleting land from the Crown range described in a licence or permit;
- orders by the district manager, or the minister, reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;
- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;
- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and,
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a minister's order issued under section 15(2) of the *Range* Act, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*, S.B.C. 2003, c. 80.

The requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, including:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*, S.B.C. 2004, c. 31.

The *Wildfire* Act came into force on March 31, 2005. Part 3; Division 3 of the *Wildfire* Act sets out the decisions that may be appealed to the Commission. It provides that the person who is subject to certain orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders refusing compensation to persons carrying out fire control on the grounds that the person caused or contributed to the fire or to the spread of the fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.

Commencing an Appeal

Notice of Appeal

For appeals under the Code, the *Forest Act*, the *Forest and Range Practices Act*, the *Range Act*, and the *Wildfire Act*, a notice of appeal must comply with the content requirements of the *Administrative Review and Appeal Procedure Regulation*. Procedures for filing an appeal under the *Private Managed Forest Land Act* are set out under the *Private Managed Forest Land Regulation*.

For all appeals, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within the time limit specified in the relevant statute. The Notice of Appeal must contain the name and address of the appellant, the name of the person, if any, making the request on the appellant's behalf, the address for giving a document to, or serving a document on the appellant, the reasons why the appellant objects to the determination, order, or review decision (the grounds for appeal), the type of remedy the appellant is seeking from the Commission, and the signature of the appellant or the person making the request on the appellant's behalf. Additionally, a copy of the determination, order or decision being appealed must be included along with the Notice of Appeal.

Generally, if the Commission does not receive the Notice of Appeal within the specified time limit, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the statutory time period for filing an appeal either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the original decision, or the review decision being appealed. A representative of the Government of B.C., or the Private Managed Forest Land Council if it is an appeal under the *Private Managed Forest Land Act*, will be the respondent in the appeal.

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. That provision applies to appeals under the *Code*, the *Forest and Range Practices Act* and the *Wildfire Act*. Also under those enactments, if the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

For appeals under the *Private Managed Forest Land Act*, the Commission may grant third party status to a person who may be directly affected by the appeal.

Intervenors

The *Code* enables the Commission to invite or permit a person who has a valid interest in the proceedings to participate in a hearing of an appeal under the *Code*, the *Forest and Range and Practices Act*, and the *Wildfire Act*, as an intervenor.

Under the *Private Managed Forest Land Act*, the Commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor.

In all cases, an intervenor may participate in a hearing to the extent that the Commission allows.

The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it.

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the Commission will invite all parties and intervenors to provide submissions. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

The *Administrative Review and Appeal Procedure Regulation* requires the Commission to, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission must also set the date, time and location of the hearing. This requirement does not apply to appeals under the *Private Managed Forest Land Act*.

For all appeals, once the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria or anywhere in the province. The Commission will decide where the hearing will take place on a case-by-case basis.

Once a hearing is scheduled, the parties will be asked to provide a Statement of Points to the Commission.

Statement of Points

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent (the Government or the Council), and all other parties, are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:
   (i) the substance of the appellant's objections to the decision of the respondent;
   (ii) the arguments which the appellant will present at the hearing;
   (iii) any legal authority or precedent supporting the appellant's position; and,
   (iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:
   (i) the substance of the respondent's objections to the appeal;
   (ii) the arguments which the respondent will present at the hearing;
   (iii) any legal authority or precedent supporting the respondent's position; and,
   (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Dispute Resolution

The Commission encourages parties to resolve the issues underlying the appeal at anytime in the appeal process. Its strategies for more formal dispute resolution are as follows:

- early screening of appeals to determine whether the appeal may be resolved without a hearing;
- pre-hearing conferences (discussed further below); and
- mediation, upon consent of all parties.

In addition, a process has been developed specifically in relation to appeals under the *Forest Act*. The Commission holds *Forest Act* appeals in abeyance for 30 days after the Notice of Appeal is

filed. This gives the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. The parties may set out the terms and conditions of their negotiated settlement in a consent order which is then submitted to the Commission for its approval.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda, which is set by the participants. The parties are given an opportunity to resolve the issues themselves, giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon, or some issues still remain, and the appeal will proceed to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Commission to issue a summons. The request must be in writing and explain why the summons is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses to make a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and will then determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide the issues raised in the appeal.

The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act*, the Commission is required to serve its decision on the parties within 42 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within three weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.

Legislative Amendments Affecting the Commission

Range Act

The *Range Act*, R.S.B.C., c. 396, was repealed effective March 31, 2005, and replaced with a new *Range Act*, S.B.C. 2004, c. 71. The number of decisions appealable to the Commission increased under the new Act and are described earlier in this report under "Appeal Process".

Wildfire Act

The *Wildfire Act*, S.B.C. 2004, c. 31, which received royal assent on April 29, 2004, came into force on March 31, 2005. This Act creates a right of appeal to the Commission from certain orders and decisions, which are set out earlier in this report under "Appeal Process".

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

Appeals

As noted in the Message from the Chair, the number of appeals filed with the Commission in 2005 was markedly higher than the number filed in 2004. The main increase in appeals was observed in relation to appeals under the *Forest Act*. Whereas there were 89 appeals filed in 2004 under the *Forest Act*, there were 132 appeals filed in 2005, an increase of approximately 50 percent.

To address the increasing number of appeals and the removal of the 45-day statutory time period for holding a hearing under the *Forest Act*, the Commission implemented a new procedure in 2005. As a matter of standard procedure, the Commission holds appeals in abeyance for 30 days after the Notice of Appeal is filed. This gives the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. In 2005, 38 appeals were successfully resolved by way of consent order, without the need for a formal hearing. This results in substantial cost savings to the parties and to the Commission.

Regarding the other statutes from which the Commission hears appeals, the number of appeals filed was either constant, or decreased during the report period. There was a decrease in the number of appeals filed under the *Code* and the *Forest and Range Practices Act*. There were 18 appeals filed under these statutes in 2005, compared with 26 in 2004. The number of appeals filed under the *Range Act* remained constant, at one appeal filed in both 2004 and 2005.

No appeals were filed under either the *Private Managed Forest Land Act* or the *Wildfire Act* during the 2005 report period.

Recommendations

The nature of the appeals and the appeal processes under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, and the *Range Act* are well established and there were no new issues or problems arising in 2005 to warrant a recommendation.

No appeals have yet been filed under the *Private Managed Forest Land Act* and the *Wildfire Act*. Accordingly, the Commission will not make any comment or recommendations in relation to either of these appeal processes at this time.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 151 appeals were filed with the Commission in 2005. Eighteen of these appeals were filed under the *Code/Forest and Range Practices Act*, 132 were filed under the *Forest Act*, and one appeal was filed under the *Range Act*. The total number of appeals closed during the reporting period was 139; three appeals were rejected, 54 withdrawn, and one was closed due to lack of jurisdiction/standing. A total of 31 appeals were heard in 2005.*

The Commission issued 87 decisions in 2005, including 40 consent orders.

* Note: hearings held and decisions issued in 2005 do not necessarily reflect the number of appeals filed in 2005. Of the 87 decisions issued in 2005, 36 were in relation to appeals filed in 2004.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Appeals filed	
Appeals filed under the *Code/Forest and Range Practices Act*	18
Appeals filed under the *Forest Act*	132
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	1
Appeals filed under the *Wildfire Act*	0
Total Appeals filed	**151**
Appeals abandoned, rejected or withdrawn	**58**
Hearings held on the merits of appeals	
Oral hearings completed	15
Written hearings completed	16
Total hearings held on the merits of appeals**	**31**
Published Decisions issued	
Final decisions	
Under the *Code/Forest and Range Practices Act*	15
Under the *Forest Act*	27
Under the *Private Managed Forest Land Act*	0
Under the *Range Act*	0
Under the *Wildfire Act*	0
Consent Order (*Code/Forest and Range Practices Act*)	2
Consent Order (*Forest Act*)	38
Consent Order (*Private Managed Forest Land Act*)	0
Consent Order (*Range Act*)	0
Consent Order (*Wildfire Act*)	0
Decisions on Preliminary Matters (*Code/Forest and Range Practices Act*)	3
Cost Decisions (*Code/Forest and Range Practices Act*)	2
Total Published Decisions issued	**87**

▲ This table provides a summary of the appeals filed with this office and their status.

Summaries of Decisions

January 1, 2005 – December 31, 2005

As stated under the "Statistics" section of this report, the Commission publishes all of its decisions on the merits of an appeal (final decisions), and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters.

The following are summaries of a selection of published decisions that were issued by the Commission during 2005. The summaries are an interpretation of the decisions by Commission staff and may be subject to different interpretation.

Appeals under the *Code*

2004-FOR-006(a) Louisiana-Pacific Canada Ltd. v. Government of British Columbia (Graham's Farms Ltd. and Downie Timber Ltd., Third Parties)

Decision Date: February 22, 2005

Panel: Katherine Lewis, Cindy Derkaz, Gary Robinson

Louisiana-Pacific Canada Ltd. ("Louisiana-Pacific") appealed a determination by the Fire Centre Manager that it had contravened sections 4(1)(a) and 13(2) of the *Forest Fire Prevention and Suppression Regulation* (the "FFPSR"), by failing to have a fire watcher on patrol and using a modified chainsaw that created a fire hazard. The Fire Centre Manager also denied compensation for fire suppression costs under section 95 of the *Code*, made a finding of liability and assessed costs of $149,354 against Louisiana-Pacific under section 162 of the *Code* for fire suppression activities undertaken by the Crown, and levied a penalty of $345 against Louisiana-Pacific for each contravention of the *FFPSR*. Louisiana-Pacific sought an order rescinding the findings in the determination and the assessed penalties.

The Government acknowledged that the Fire Centre Manager had exceeded his jurisdiction in making a finding of liability under section 162 of the *Code*, and that he was barred from issuing penalties due to the expiry of the statutory limitation period in section 4(1) of the *Administrative Remedies Regulation*. The Commission rescinded the Fire Centre Manager's determination as it pertained to these sections.

However, the Commission found that Louisiana-Pacific was vicariously liable, under section 117(2) of the *Code* for the acts of the Third Parties, as they were contractors of Louisiana-Pacific for the purposes of the *Code*. The Commission found that the contravention of section 4(1)(a) of the *FFPSR* contributed to the spread of the fire. The Commission also found that section 13(2) of the *FFPSR* was contravened. Accordingly, the Commission confirmed the Fire Centre Manager's

determination that sections 4(1)(a) and 13(2) were contravened, and his denial of fire suppression costs under section 95 of the *Code*.

- The appeal was allowed, in part.

2004-FOR-007(a), 2004-FOR-008(a), 2004-FOR-009(a), 2004-FOR-010(a), 2004-FOR-011(a) Dave Tremblay v. Government of British Columbia

Decision Date: April 1, 2005

Panel: Alan Andison

Dave Tremblay appealed five separate determinations of the District Manager that Mr. Temblay cut or removed Crown timber without authority, contrary to section 96 of the *Code*. Mr. Tremblay also appealed four separate deterrent penalties for the contraventions. He argued that the contraventions should be excused on the grounds of officially induced error, or that the penalties be rescinded or reduced. Mr. Tremblay also asked the Commission to order the return of, or compensation for, logs that the Crown had seized and sold in relation to Appeal No. 2004-FOR-007.

There was no dispute that Mr. Tremblay and/or his employees harvested the timber as alleged. The Commission found that Mr. Tremblay did not establish that the unauthorized harvesting resulted from an officially induced error. Accordingly, the Commission upheld all five findings of contravention.

For the penalties levied in Appeal Nos. 2004-FOR-009 and 011, the Commission found that Mr. Tremblay's belief that approvals were given mitigated the seriousness of the contravention and the level of deterrence necessary. Therefore, the Commission ordered that the penalties be reduced to zero.

For the penalties levied in Appeal Nos. 2004-FOR-008 and 010, Mr. Tremblay accepted responsibility for the contraventions. The Commission confirmed the penalties assessed by the District Manager.

- For Appeal No. 2004-FOR-007, the Commission found that the seizure and sale of logs by the Crown was not part of the determination of the contravention at issue in the appeal.
- Appeal Nos. 2004-FOR-007/008/010 were dismissed, and Appeal Nos. 2004-FOR-009 and 011 were allowed, in part.

2004-FOR-012(a) and 2004-FOR-021(a) James Darwin v. Government of British Columbia

Decision Date: August 22, 2005

Panel: Alan Andison

James Darwin appealed two separate determinations by the District Manager that he contravened sections 96(1) and (2) of the *Code*, by cutting and removing Crown timber without authority. The District Manager levied penalties of $30,000 and $12,500 for the contraventions. Mr. Darwin maintained that he lawfully salvaged all of the wood and that someone else must have cut the trees. He requested that both determinations be rescinded or, in the alternative, be reduced on the grounds that they are excessive in the circumstances.

The Commission found that most of the logs in Mr. Darwin's possession had been illegally harvested. The Commission also found that Mr. Darwin did not provide a credible explanation for how he obtained the wood.

The Commission found that the penalties were reasonable in the circumstances.

- The appeals were dismissed.

2004-FOR-013(a) Marilyn Abram v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: April 12, 2005

Panel: Cindy Derkaz

Marilyn Abram appealed a determination of the District Manager, as upheld by a Review Panel, that she contravened sections 96(1) and 96(2) of the *Code* by illegally harvesting Crown timber. Ms. Abram requested that the Commission rescind the review decision on the grounds that the Review Panel erred by disregarding the undue delay in the process that led to the District Manager's determination, disregarding the lack of formal notice of the hearing before the District Manager, failing to ensure there was sufficient evidence against her, and applying the wrong standard of proof to the evidence. She also sought an order of costs. The Government sought an order of costs against Ms. Abram.

The Commission held that Ms. Abram failed to establish a legal basis for her claim of undue delay.

The Commission also held there was no legal or factual basis to conclude that there was inadequate notice of the original hearing.

The Commission held that the primary purpose of penalties under section 119 is to compensate the Crown for loss or damage to public forest resources, and to deter unauthorized harvesting, rather than punishing wrongdoers. The Commission found that the appropriate standard of proof for administrative remedies is on a "balance of probabilities", and that the evidence against Ms. Abram was clear and cogent and was sufficient to "tip the evidentiary scales."

The Commission concluded that Ms. Abram contravened sections 96(1) and 96(2) of the *Code*. The Commission found no special circumstances under section 84(3) of the *Forest and Range Practices Act* that warranted an order of costs for either party.

- The appeal was dismissed.
- The applications for costs were denied

2004-FOR-014(a) and 2004-FOR-017(a) Beau West Ranches Ltd., McDonald Ranch and Lumber Ltd. v. Government of British Columbia

Decision Date: October 28, 2005

Panel: Alan Andison

Beau West Ranches Ltd. ("Beau West") and McDonald Ranch and Lumber Ltd. ("McDonald") appealed two determinations issued by the District Manager, that the Appellants had contravened section 74(1) of the Code by failing to comply with their range use plans. A penalty of $500 was levied against each of the Appellants.

Beau West argued that there was no contravention, and asked the Commission to rescind the contravention and the penalty.

McDonald asked the Commission to rescind both the finding of contravention and the penalty.

The Commission found that the Appellants' cattle were out of rotation and that they had exceeded the safe degree of pasture use, contrary to the Appellants' approved range use plans.

The Commission also found that the defence of due diligence did not apply on the facts of these cases, nor did the defence of officially induced error.

The Commission found that the penalties were appropriate in the circumstances.

- The appeals were dismissed.

2004-FOR-015(a) and 2004-FOR-016(a) Evelyn McIntyre, Frank McIntyre and Joy McIntyre, Cam McDonald and Tom Hallbauer v. Government of British Columbia

Decision Date: October 28, 2005

Panel: Alan Andison

Evelyn, Frank, and Joy McIntyre, Cam McDonald, and Tom Hallbauer (collectively, the "Appellants") appealed two determinations issued by the District Manager that the Appellants had contravened section 74(1) of the *Code* by conducting grazing operations contrary to an approved range use plan. Specifically, the District Manager found that the Appellants had exceeded a safe degree of use of certain pastures and had cattle out of rotation, contrary to an approved range use plan. He levied a penalty of $3,000 against the McIntyres, and a penalty of $500 against Mr. Hallbauer and Mr. McDonald.

The Commission found that the Appellants' cattle were out of rotation contrary to their range use plans and that the safe degree of use, described in the plans, was exceeded. It also found that the Appellants had not established a defence of due diligence or mistake of fact.

The Commission also found that the Appellants did not establish a defence of officially induced error.

The Commission found that the penalties were appropriate in the circumstances.

▶ The appeals were dismissed.

2004-FOR-020(a) and 2004-FOR-025(a) Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: April 20, 2005

Panel: Alan Andison, Bruce Devitt, Stephen Willett

Weyerhaeuser Company Limited ("Weyerhaeuser") appealed two determinations made by the District Manager that it had failed to meet certain silviculture obligations in standard units on two cutblocks. Specifically, the District Manager found that Weyerhaeuser failed to meet minimum stocking standards on replanted areas by having insufficient replanted trees (stems) per hectare, and carried out inadequate surveys of those restocked areas.

Weyerhaeuser asked the Commission to issue orders varying both determinations by finding that Weyerhaeuser had established free growing stands in the standard units in question, and to rescind the determinations. Alternatively, Weyerhaeuser asked the Commission to refer the determinations back to the District Manager with directions.

The Commission found that free growing stands were established, on average, over both cutblocks and Weyerhaeuser did not contravene sections 70(3) and (6) of the *Code*. The Commission further found that there was no reasonable basis to conclude that Weyerhaeuser had failed to carry out survey requirements pursuant to section 24(a) of the *Silviculture Practices Regulation* or the *Timber Harvesting and Silviculture Practices Regulation*.

▶ The appeals were allowed.

2005-FOR-001(a) L&M Lumber Ltd. v. Government of British Columbia (Forest Practices Board, Third Party) (Sierra Club of Canada, Applicant)

Decision Date: June 30, 2005

Panel: Alan Andison

This was an application by the Sierra Club of Canada ("Sierra") for intervenor status in an appeal filed by L & M Lumber Limited. Sierra sought intervenor status to participate in the legal argument on the statutory defence of due diligence as provided in section 119.1(1)(a) of the *Code*. The other parties took no position on the application.

The Commission found that Sierra had a valid interest in the issues raised in that it possesses a unique environmental policy perspective that may not be represented by the other parties to the appeal, and its participation would be of assistance in the appeal.

► The application was allowed.

2005-FOR-001(b) L & M Lumber Ltd. v. Government of British Columbia (Forest Practices Board, Third Party; Sierra Club of Canada, Intervenor; Council of Forest Industries, Applicant)

Decision Date: October 25, 2005

Panel: Alan Andison

The Council of Forest Industries ("COFI") applied for intervenor status in an appeal filed by L & M Lumber Ltd.

COFI sought intervenor status in order to make submissions on the application and the substance of the due diligence defence.

The Commission found that COFI had a valid interest in the appeal and that it had a unique industry-wide perspective on the issues under appeal as it represents forest companies throughout the interior of British Columbia. Further, the Commission found that COFI's limited participation would not result in unnecessary delay, and that it would provide an industry-wide perspective on the due diligence defence, which is unique from the other parties' perspectives.

► The application was allowed.

Appeals under the *Forest Act*

All of the appeals decided under this Act during the report period related to stumpage rates. A stumpage rate is the amount of money that a person must pay to the Government for harvesting Crown timber. The Ministry of Forests determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

2004-FA-003(c) Western Forest Products Limited v. Government of British Columbia

Decision Date: September 21, 2005

Panel: Margaret Eriksson, R.A. Gorley, Robert Wickett

Western Forest Products Limited ("Western") appealed 15 stumpage advisory notices ("SANs") issued by the Appraisal Coordinator. The Appraisal Coordinator calculated Western's truck haul and towing or barging allowance on the basis that the appraisal log dump was at Jordan River, and not at the location that Western had indicated which is further away from the harvest area and would result in decreased stumpage being payable to the Government by Western.

Western sought to have the SANs rescinded and to direct the Appraisal Coordinator to apply the concepts of licensee neutrality and the notional efficient operator, so that the stumpage rates would be calculated based on the nearest suitable appraisal log dump, which, Western argued, was not at Jordan River.

The crux of the appeal dealt with whether the Jordan River site was a "suitable" appraisal log dump for Western with regard to the cutting permits.

The Commission concluded that the Jordan River site was not suitable because it had several physical and environmental constraints that prevented a notional average operator from having

access to it. Since an appraisal is based on estimated costs of a notional average operator, if Jordan River is unsuitable as an appraisal log dump for the notional average licensee, it must be unsuitable for all.

The Commission rescinded the SANs and directed the Appraisal Coordinator to reappraise the stumpage rates for the cutting permits.

▶ The appeal was allowed.

2004-FA-031(a) Eric and Pam Meutzner v. Government of British Columbia

Decision Date: March 24, 2005

Panel: James S. Hackett

Eric and Pam Meutzner (the "Meutzners") appealed a stumpage rate determination with respect to a cutting permit issued under a woodlot licence. The Meutzners argued that the appraisal incorrectly applied an adjustable rate rather than the fixed rate they requested. The Meutzners asked that the stumpage rate be fixed. They sought to have the matter sent back to the Timber Pricing Coordinator with directions.

The Commission found that the Meutzners had given the regional appraisal coordinator "three weeks prior written notice," of their choice to change the status of the appraisal to a fixed rate, as required by the Interior Appraisal Manual (the "IAM"). The Commission found this to be a reasonable method of communication. The Commission referred the matter back to the Timber Pricing Coordinator to fix the rate.

▶ The appeal was allowed.

2004-FA-042(a) Tahtsa Timber Ltd. v. Government of British Columbia

Decision Date: January 6, 2005

Panel: Gary Robinson

Tahtsa Timber Ltd. ("Tahtsa") appealed a stumpage rate determination in a SAN issued by the Revenue Officer Supervisor, for a road permit. Tahtsa submitted that it had received a "confirmed" stumpage rate of $18.95 per cubic metre from a district engineering officer with the Ministry of Forests on July 3, 2003. Tahtsa subsequently received the SAN indicating a stumpage rate of $21.54 per cubic metre. Tahtsa asked the Commission to refer the SAN back to the Revenue Officer Supervisor and direct that the rate be re-determined to reflect the "original agreement", and for this rate to be retroactive to July 4, 2003.

The Commission found that the district engineering officer's communication with Tahtsa regarding the stumpage rate of $18.95 per cubic metre did not satisfy the requirements of section 105 of the *Forest Act* and the provisions of the IAM: the district engineering officer was not identified in the IAM as a person responsible for determining rates of stumpage, and the policies and procedures for determining the stumpage rate for road permits were not followed prior to his quote.

The Commission also noted that the Ministry did not provide the SAN in a timely manner but this did not breach any legal requirement. Additionally, the Commission found that it had no jurisdiction to order monetary relief in this appeal even if there had been a negligent misstatement or misrepresentation resulting in financial loss to Tahtsa.

The Commission confirmed the stumpage rate of $21.54 per cubic metre.

▶ The appeal was dismissed.

2004-FA-048(a) and 2004-FA-049(a) Doman-Western Lumber Ltd. v. Government of British Columbia.

Decision Date: January 10, 2005

Panel: Alan Andison

Doman-Western Lumber Limited ("Doman-Western") appealed two SANs issued by the Appraisal Coordinator. It submitted that the

Appraisal Coordinator erred by applying a road use charge of $0.25 per cubic metre. Doman-Western requested that the Appraisal Coordinator be directed to re-appraise the stumpage rates using a road use charge value based on a prepayment of $20,000 from Doman-Western to a landowner. The prepayment was made pursuant to road use agreements which provided that Doman-Western would pay the landowner $1.00 per cubic metre of timber hauled over a road on its property.

The Commission found that the appropriate road use charge should not be based on the prepayment of $20,000. The Commission characterized the prepayment of $20,000 as a floating deposit that would not be utilized if Doman-Western did not use the road.

However, the Commission rejected the road use charge of $0.25 per cubic metre as arbitrary and found the $1.00 per cubic metre charge set out in the road use agreements to be reasonable.

The Commission sent the stumpage determinations back to the Appraisal Coordinator with directions to reconsider the stumpage rates by applying a road use charge of $1.00 per cubic metre.

▶ The appeals were allowed, in part.

2004-FA-062(a) Canadian Forest Products Ltd. v. Government of British Columbia
Decision Date: April 15, 2005
Panel: Alan Andison

Canadian Forest Products Ltd. ("Canfor") appealed a SAN and two stumpage adjustment notices issued by the Timber Pricing Coordinator. Canfor asked the Commission to refer the notices back to the Timber Pricing Coordinator with directions to re-determine the stumpage rates by adding the silviculture cost allowance. Alternatively, Canfor asked that it not be required to establish a free growing stand on openings greater than one hectare in area.

The Commission concluded that there was no pre-existing obligation on Canfor to perform basic silviculture on the areas that were harvested. Consequently, the Commission upheld the decision of the Timber Pricing Coordinator to remove the silviculture cost allowance, and confirmed the stumpage determinations.

▶ The appeal was dismissed.

2004-FA-072(a) to 074(a); 080(a) to 083(a); 089(a); and 2005-FA-031(a) and 046(a) Teal Jones Forest Ltd., Teal Cedar Products Ltd. v. Government of British Columbia
Decision Date: May 20, 2005
Panel: Alan Andison

Teal Jones Forest Ltd. and Teal Cedar Products Ltd. ("Teal") appealed ten separate stumpage rate determinations of the Appraisal Coordinator with respect to ten cutting permits that were held by Teal. Teal requested that the Commission rescind the SANs and issue an order directing the Appraisal Coordinator to reappraise the stumpage rates using Shoal Island, not Jordan River, as the appraisal log dump.

The Commission found that the process of selecting an appraisal log dump is an exercise of discretion that must be exercised in a reasonable manner, and must be consistent with the objectives and intent of the Coast Appraisal Manual (the "CAM"). The Commission held that it was not a reasonable exercise of discretion under the CAM to select Jordan River as the appraisal log dump for the ten cutting permits, and that the stumpage rates should be re-assessed based on Shoal Island as the appraisal log dump because it was the closest log dump that was functional and available to the licensee.

The matter was sent back to the Appraisal Coordinator with directions.

▶ The appeals were allowed.

2004-FA-075(a) Jack Alexander Bellamy (Horning Forest Products and Services Ltd.) v. Government of British Columbia
Decision Date: April 22, 2005
Panel: James S. Hackett

Jack Alexander Bellamy appealed the stumpage rate determinations of the Timber Pricing Coordinator with respect to a blanket salvage cutting permit issued under a woodlot licence. He appealed on the basis that the IAM amendment No. 8 requiring reappraisal commencing November 1, 2003, should not have applied to him. Further, he argued that the reappraisal incorrectly applied an adjustable stumpage rate rather than a fixed rate, and a flaw in the appraisal system resulted in operations becoming uneconomical. He asked that the stumpage rate be fixed at $0.25 per cubic metre, the rate that was previously given for the duration of the cutting permit.

The Commission concluded that the financial viability of an operation was not a relevant factor when considering a stumpage rate.

The Commission found that sections 2.5(2)(d) and 2.3.2 of the amended IAM applied to the facts of this case, and therefore, the cutting permit was subject to a mandatory annual reappraisal commencing on November 1, 2003.

However, the Commission found that Mr. Bellamy had elected to fix the rate for the cutting permit before the amendment to the IAM came into effect. Therefore, the rate should have remained fixed until the next annual reappraisal, which was in November 2004. The Commission rescinded the stumpage rate determinations that did not reflect the $0.25 per cubic metre rate, and referred the determinations back to the Timber Pricing Coordinator.

▶ The appeal was allowed, in part.

2004-FA-078(a) Weldwood of Canada Limited (now 100 Mile Lumber, a Division of West Fraser Mills Ltd.) v. Government of British Columbia
Decision Date: April 14, 2005
Panel: David Ormerod

Weldwood of Canada Ltd. ("Weldwood") appealed a SAN and a stumpage adjustment notice issued by the Timber Pricing Coordinator. Weldwood asked the Commission to direct the Timber Pricing Coordinator to include 400 metres that Ministry staff had incorrectly removed from the on-block road length for Cutting Permit 509, and to re-determine the stumpage rates accordingly.

The Commission concluded that reducing the on-block road length in the determination of the stumpage rates was arbitrary and unsubstantiated. The Commission also found that Ministry staff were obligated to discuss the road length reduction with Weldwood prior to determining stumpage rates. The Commission referred the matter back to the Timber Pricing Coordinator with directions.

▶ The appeal was allowed.

2004-FA-084(a) James Douglas Brown-John, Deborah May Brown-John, Arrowhead Enterprises Ltd., the Estate of David George Falconer v. the Government of British Columbia
Decision Date: June 17, 2005
Panel: Alan Andison

James Brown-John, Deborah May Brown-John, Arrowhead Enterprises Ltd., and the Estate of David George Falconer (the "Appellants") appealed a stumpage determination issued by the Timber Pricing Forester for their blanket salvage cutting permit. The Appellants asked the Commission to vary the stumpage rate to the rate used in earlier stumpage adjustment notices, or refer the matter back to the Timber Pricing Forester with directions.

The Commission found that amendment No. 8 to the IAM did not violate the presumption

against the retroactive or retrospective application of the law, nor did it interfere with the Appellants' vested rights, if, in fact, they were vested rights. However, the Commission found the stumpage determination should be re-determined because the stumpage rate for a blanket salvage cutting permit that had a fixed rate prior to the IAM amendment should be reappraised on the permit's anniversary date, not adjusted quarterly, as found in *Bellamy* (above), a previous Commission decision.

► The appeal was allowed, in part.

2005-FA-034(a) to 2005-FA-040(a) Echa-Peh Forest Resources Ltd. v. Government of British Columbia

Decision Date: September 29, 2005

Panel: David Ormerod

Echa-Peh Forest Resources Ltd. ("Echa-Peh") appealed seven SANs issued by the Appraisal Coordinator. It sought to have the stumpage rates re-appraised on the grounds that the CAM should be interpreted so that timber harvested under a road permit would be used to determine the stumpage rates for the cutting permits.

The Commission concluded that there was sufficient log scale data from timber previously harvested under the forest licence, making the inclusion of timber harvested under the road permit, for the calculation of stumpage rates, unnecessary. The Commission found that the Appraisal Coordinator correctly applied the CAM.

► The appeals were dismissed.

2005-FA-091(a) Jason Matthew Carmichael, Ian Robert Carmichael, Linda Joanne Carmichael v. Government of British Columbia

Decision Date: December 6, 2005

Panel: David Ormerod

Jason Matthew Carmichael, Ian Robert Carmichael and Linda Joanne Carmichael (the "Appellants") appealed a SAN issued by the Timber Pricing Coordinator, in which the low volume additive ("LVA") was not applied to calculate the stumpage rates.

The Appellants asked the Commission to send the SAN back to the Timber Pricing Coordinator, with directions to apply the LVA. In addition, they also requested the opportunity to "lock-in" the stumpage rate resulting from this re-determination.

The Commission found that section 4.8.3(1) of the IAM required that the LVA be applied to the appraisals in this case. With respect to the Appellants' request to be able to "lock in" a new stumpage rate for the re-determined SAN, the Commission found that there was no authority under the IAM to allow the Appellants to retroactively fix a new rate. However, the Commission found that the Appellants continued to have the opportunity to fix any current stumpage rates for cutting authorities extant.

► The appeal was allowed, in part.

Appeals under the *Forest and Range Practices Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Forest and Range Practices Act*.

Appeals under the *Private Managed Forest Land Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act*.

Appeals under the *Range Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Range Act*.

Appeals under the *Wildfire Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Wildfire Act*.

Appeals of Decisions

January 1, 2005 – December 31, 2005

British Columbia Supreme Court

There were no judgments made during the reporting period.

British Columbia Court of Appeal

Rodney Gilbert and Linda Gilbert v. The Forest Appeals Commission and Forest Practices Board
2005 BCCA 117
Decision date: February 25, 2005
Court: Braidwood, J. Hall, J. Low, J.

This was an appeal by Rodney and Linda Gilbert of a decision of the Supreme Court of British Columbia which upheld the Commission's decision on their Appeal No. 2001-FOR-001, *Rodney Gilbert and Linda Gilbert v. Government of British Columbia.*

The Commission had found that the Gilberts were vicariously liable for, and had benefited from, the actions of David Colebank, whom the Gilberts hired to clear their land. The Commission had also determined that the Gilberts contravened section 96(1) of the *Code*; either directly, as their relationship with Mr. Colebank was in the nature of a partnership, or under section 96(3) because Mr. Colebank did the unauthorized cutting of Crown timber "on behalf of" the Gilberts.

The Supreme Court held that the evidence before the Commission was consistent with the conclusion that the activity of Mr. Colebank was undertaken "on behalf of" the Gilberts, and accordingly, dismissed the appeal.

The Appellants argued that the Supreme Court judge erred: by reviewing the Commission's decision on a standard of "reasonableness simpliciter" instead of a "standard of correctness"; by erroneously interpreting the phrase "on behalf of" in section 96(3); by determining that a finding of "no evidence" on an issue is a question of fact rather than a question of law; and by failing to overturn the finding of the Commission that the Appellants were in a partnership with Mr. Colebank and, therefore, were in breach of section 96(1) of the *Code*.

The Court of Appeal found it unnecessary to determine what standard of review should have applied to the Commission's decision as the result would have been the same under each test. The Court held that the Commission reasonably, and correctly, interpreted "on behalf of" to mean "for the benefit of". Accordingly, the Court of Appeal found that since it was undisputed that the Appellants profited from the unlawful harvesting of Crown timber by Mr. Colebank through the sale of that timber, section 96(3) rendered them liable under section 96(1) of the *Code*, as Mr. Colebank's

unlawful conduct was done on their behalf.

The Court found it unnecessary to comment on the reasonableness or the correctness of the alternative basis of partnership on which the Commission found the Appellants vicariously liable.

▶ Accordingly, the appeal was dismissed.

Supreme Court of Canada

There were no judgments made during the reporting period.

APPENDIX I

Legislation and Regulations

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2005). Please note that subsequent to the publication of this Annual Report, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* Applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) Repealed.

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Section Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act*, and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.

(4) Repealed.

(5) Repealed.

(6) Repealed.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Forest and Range Practices Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Correction, Reviews and Appeals

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74 (3) (d) is not stayed or is stayed subject to conditions, on being satisfied that a stay

or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction or clarification of a determination

79 (1) Within 15 days after a determination is made under section 16, 26 (2), 27 (2), 32 (2), 37, 51 (7), 54 (2), 57 (4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) Repealed.

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a

review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83 2)(a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order

against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1), and

(b) a determination of an employee of the ministry under section 105(1).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government

will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) o produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise; an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the Forest and Range Practices Act applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Reviews

69 (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,

(a) an order of a forest officer under section 60(1),

(b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63 (1),

(c) a decision of the district manager referred to in section 25(5) or 50(4), or

(d) amendments under section 47 or 48,

the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister, must review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, decision or amendments, and

(b) the record pertaining to the original order, decision or amendments

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.

(4) The minister may extend the time limit in subsection (3) before or after its expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to

(a) make an order referred to in subsection (1)(a) or (b),

(b) make a decision referred to in subsection (1)(c), or

(c) prepare amendments referred to in subsection (1)(d)

that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.

(6) After the preparation of amendments under subsection (5) (c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments.

Appeals to the commission

70 (1) The person who is the subject of, or whose licence or permit is affected by,

(a) an order,

(b) a decision, or

(c) amendments

referred to in section 69 (1) may appeal to the commission either of the following, but not both:

(d) the order, decision or amendments;

(e) a decision made after completion of a review of the order, decision or amendments.

(2) An applicant referred to in section 15 (2) may appeal to the commission an order of the minister made under that provision.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

71 (1) On an appeal under section 70, the commission may

(a) consider the findings of the person who made the order or decision or who prepared the amendments, and

(b) either

(i) confirm, vary or rescind the order, decision or amendments, or

(ii) with or without directions, refer the matter back to that person for reconsideration.

(2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to the holder of the licence or permit.

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal

(4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Review of an order

37 (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(4), 25, 26, 27, 28(1) or (3)(d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, and

(b) the record pertaining to the original order

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.

(4) The minister may extend the time limit in subsection (3) section before or after the time limit's expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37 (1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

(3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:

(a) the order;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

40 (1) The board may appeal to the commission from either of the following, but not both:

(a) an order referred to in section 37;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may

(a) consider the findings of the decision maker who made the order, and

(b) either

(i) confirm, vary or rescind the order, or

(ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

(2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.

(4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This Regulation applies to appeals under the *Code, Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41(4) of that Act, or

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest and Range Practices Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was

delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board.

Procedure following receipt of notice of appeal

21 (1) Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) subject to subsections (2) and (3), set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Forest and Range Practices Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.

(2) and (3) Repealed. [B.C. Reg. 525/2004, s. (c).]

[am. B.C. Reg. 525/2004, s. (c).]

Panel chair determined

22 For an appeal to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for an appeal under the *Forest Act*

26 The prescribed period for the purposes of section 1491(3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act* or the *Forest and Range Practices Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, or the *Forest and Range Practices Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

Part 5

TRANSITION

Section Repealed

28 Repealed. [B.C. Reg. 525/2004, s. (c).]

Private Managed Forest Land Act

Part 4

COMPLIANCE AND ENFORCMENT

Division 2 – Administrative Remedies

Appeal to Commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the

appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32(2) of the Act, and

(b) the order, decision or determination referred to in section 33(1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

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